

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA
v.
MICHAEL HAYWOOD MALONE (5)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 13, 2012, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Ernest Gonzalez.

On April 28, 2008, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 46 months imprisonment followed by a 3-year term of supervised release, for the offense of conspiracy to possess with intent to distribute cocaine and cocaine base. Defendant began his term of supervision on May 6, 2011.

On December 20, 2011, the U.S. Probation Officer filed a Petition for Offender Under Supervision (“the Petition”) (Dkt. 435). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall notify the probation officer at least ten days prior to any change in residence or employment; and (2) Defendant shall participate in a program of testing

and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) Defendant failed to reside at the address listed as his residence for supervision purposes. Defendant listed that he resides with his mother at 9551 Wickersham Road, Apartment 1098, Dallas, Texas 75238. According to his mother, Glenda Johnson, Defendant did not stay at the listed residence from September 28 through October 5, 2011. Defendant did not report another address to his probation officer. On October 6, 2011, Defendant met with Senior U.S. Probation Officer Shelli Ray. Defendant admitted verbally that he spends the night at different locations such as his girlfriend's home in Plano, Texas, his mother's home in Dallas, Texas, or with a friend who lives in Dallas, Texas; and (2) Defendant refused to submit a urine specimen at Genesis Counseling, P.C., Dallas, Texas, as directed on August 8, 17, 29, September 21, and October 5, 2011.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the February 13, 2012 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of nine (9) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas, if appropriate.

SIGNED this 17th day of February, 2012.